

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA

Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>96-10917</u>
WAYNE LUCAS GUILFORD)	
SUSAN KAY GUILFORD)	
)	FILED
Debtors)	at 2 O'clock & 55 min.P.M.
)	Date: 6-25-97
)	
WACHOVIA BANK OF GEORGIA, N.A.)	
)	
Movant)	
)	
vs.)	
)	
WAYNE LUCAS GUILFORD)	
SUSAN KAY GUILFORD, Debtors)	
AND BARNEE C. BAXTER,)	
CHAPTER 13 TRUSTEE)	
)	
Respondents)	

ORDER

By motion filed March 14, 1997 and captioned "Motion for Reconsideration of Order of Confirmation" Wachovia Bank of Georgia, N.A. (hereinafter "Wachovia") seeks an order to "reconsider . . . confirmation order allowing the claim of [Wachovia] in the amount of \$7,000.00 and allow the claim in the amount of \$8,227.72 . . ." . The motion is actually a motion to allow late claim. The facts necessary to resolve the motion can be ascertained from the case

file.

The debtor filed for relief under Chapter 13 of Title 11 United States Code on May 3, 1996. Wachovia was a listed creditor and received notice of the debtor's filing and the bar date for the filing of proofs of claim September 9, 1996. Wachovia failed to file a proof of claim and pursuant to Federal Rule of Bankruptcy Procedure (FRBP) 3004 the debtor filed a secured proof of claim on behalf of Wachovia for \$7,000.00. By order entered September 23, 1996 the debtor's plan was confirmed allowing the Wachovia claim as filed by the debtor together with future interest at the rate of 9% per annum. On January 2, 1997 Wachovia unsuccessfully attempted to amend the proof of claim filed by the debtor asserting an amount due of \$8,227.71 resulting in the present motion.

The facts of this case are virtually identical to those set forth in the In re Hamilton, 179 B.R. 749 (Bankr. S.D. Ga. 1995). In Hamilton, Judge Walker establishes the court's limitations under the bankruptcy rules in permitting a late -filed proof of claim. FRBP 3004 and Bankruptcy Code §501(c) permit a debtor to file proof of claim on behalf of a creditor where the creditor fails to. In order for a creditor's subsequent proof of claim to supersede that filed by the debtor the creditor's claim must be timely filed pursuant to FRBP 3002(c). FRBP 3004 does not address a creditor's ability to amend a proof of claim filed by a debtor. Therefore, there are now provisions under the Bankruptcy

Code or Rules for a creditor to amend a proof of claim filed on its behalf by a debtor beyond the time prescribed under FRBP 3002(c).

The failure to file a proof of claim by the bar date bars a creditor from participating in the bankruptcy process "unless [the creditor] could establish sufficient grounds for the filing of a late proof of claim." Biscayne 11 Condominium Assoc., Inc. v. South Atlantic Financial Corp. (In re South Atlantic Financial Corp.) 767 F.2d, 814, 817 (11th Cir. 1985). Sufficient grounds are defined by Rule 9006(b), Id. at 817, which provides in relevant part at b(3)

Enlargement limited period. The court may enlarge the time for taking action under Rules . . . 3002(c) only to the extent and under the conditions stated in those rules.

Excusable neglect under FRBP 9006(b) may not be invoked by a creditor to expand the time limits under FRBP 3002(c).

"The six enumerated exceptions contained in Bankruptcy Rule 3002(c) are the exclusive means available to a creditor with notice of the bankruptcy proceeding to file a late proof of claim. Matter of Jones 154 B.R. 816 (Bankr. M.D. Ga. 1993)." Hamilton at 755.

"Bankruptcy Rule 9006(b) (3) clearly establishes that the time limits under Bankruptcy Rule 3002(c) are absolute. I may not permit the filing and allowance of a late claim over the objection of any party in interest." Centerbank Mortgage Company v. Bessie Lou Mack (In re Mack) Chapter 13 case No. 88-11330 @ p. 2 (Bankr. S.D. Ga. Augusta Division, July 25, 1991 Dalis, J.).

In this case Wachovia made no showing whatsoever other than a representation by counsel that they were owed more than the amount of claim filed by the debtor.

It is therefore ORDERED that the motion of Wachovia Bank of Georgia, N.A. styled a motion to reconsider confirmation requesting the allowance of a late filed claim is denied.

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 25th day of June, 1997.